

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

Plaintiff,

v.

JOHN DOE, subscriber assigned IP address
73.225.38.130,

Defendant.

Case No. 2:17-cv-01731-TSZ

**COUNTER-DEFENDANT'S MOTION
TO EXTEND CERTAIN CASE
DEADLINES**

**NOTED ON MOTION CALENDAR:
April 26, 2019**

JOHN DOE, subscriber assigned IP address
73.225.38.130,

Counter-Plaintiff,

v.

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

Counter-Defendant.

1 Plaintiff/Counter-Defendant, Strike 3 Holdings, LLC (“Strike 3”) hereby moves to extend
2 case deadlines, and states as follows:

3 1. A scheduling order “may be modified only for good cause and with the judge’s
4 consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily considers the
5 diligence of the party seeking the amendment.” *In re Washington Mut. Mortg. Backed Sec.*
6 *Litig.*, No. CV 09-37MJP, 2011 WL 13193267, at *1 (W.D. Wash. Dec. 27, 2011) (quoting
7 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Here, there is such
8 good cause to warrant an extension of deadlines.

9 2. Around December 20, 2018, after the Court entered the initial case management
10 deadlines in this case, both parties began propounding discovery. On January 15, 2019, Strike 3
11 served John Doe subscriber assigned IP address 73.225.38.130 (“Counter-Plaintiff”) with its
12 First Request for Production, significantly requesting Counter-Plaintiff produce all computer
13 hard drives used in his residence during the period of alleged infringement. Counter-Plaintiff
14 noted that he would need additional time to produce these hard drives, and on March 16, 2019,
15 the parties jointly requested an extension of several discovery deadlines.

16 3. On March 18, 2019, the Court granted in part the parties joint stipulated motion to
17 extend dates. The parties continued their discovery exchange. On March 18, 2019, Counter-
18 Plaintiff responded to Strike 3’s Request for Production and disclosed approximately *one-*
19 *hundred hard drives*. Further, on April 9, 2019, Counter-Defendant deposed Counter-Plaintiff
20 who, for the first time stated that, aside from the hard drives he disclosed on March 18, 2019, at
21 least thirty other hard drives exist. At this deposition, Counter-Defendant also learned that on or
22 around March 2018, Counter-Plaintiff’s son disposed¹ of a computer hard drive which he had
23 been using for a significant amount of time during the period of infringement. Despite Counter-
24 Defendant’s significant efforts, it has been unable to serve Counter-Plaintiff’s son with a
25

26 ¹ Counter-Plaintiff testified that to the best of his knowledge, his son “sold” this computer after
commencement of this lawsuit.

1 subpoena for deposition or for production of this hard drive. Strike 3 has reason to believe that
2 the location of the computer and the data stored thereon is highly relevant to the counter-claims
3 in this case. Indeed, Counter-Plaintiff's testimony is that this computer was used in his home
4 during the period of infringement and was removed from his home after commencement of this
5 lawsuit. Moreover, Counter-Plaintiff testified that in 2013, after receiving a DMCA notice
6 (pursuant to the Digital Millennium Copyright Act), he told his son to "cease and desist" the
7 infringing activities. Counter-Plaintiff testified that his son stated that he "understood" and "that
8 it wouldn't happen" again. As such, the computer which Counter-Plaintiff provided to his son
9 and which was used during the period of infringement is of significant importance to the counter-
10 claims in this case.

11 4. Since Counter-Plaintiff disclosed these hard drives, the parties have been
12 conferring on the proper protocol for hard drive examination. However, to date, the parties have
13 been unable to stipulate to a protocol. Counter-Defendant anticipates that the parties will be
14 unable to agree and either a Motion to Compel or a Motion for Protective order will be filed.
15 Additionally, assuming the parties can finalize a protocol, it will take Strike 3's expert a
16 substantial amount of time to inspect, create a forensically sound image (if necessary) of any
17 hard drive, examine the forensically sound images, and complete an expert report regarding the
18 examination of each hard drive. Strike 3 anticipates that Counter-Plaintiff's delay in the
19 disclosure and production of this highly material evidence will substantial impact the discovery
20 deadlines.

21 5. Accordingly, Strike 3 respectfully proposes that the expert witness disclosure
22 deadline be extended by sixty (60) days, up to and including June 14, 2019. Additionally, Strike
23 3 respectfully requests that the deadlines below be extended as follows:

- 24 • 6/28/2019 - Rebuttal Expert Testimony
- 25 • 7/18/2019 - Discovery Motions Filing Deadline
- 26 • 8/16/2019 - Discovery Completion Deadline

- 8/30/2019 - Dispositive Motions Filing Deadline
- 7/18/2019 - Deadline for Filing motions related to expert testimony (e.g., Daubert Motions)

6. Strike 3 does not seek to move the trial date, or any trial-related deadlines.

7. This request is made in good faith and not made for the purpose of undue delay.

8. Strike 3's counsel called Plaintiffs' counsel, Mr. Curt Edmonson, to attempt to discuss the continuance requested herein. However, Mr. Edmonson did not answer and Strike 3's counsel left voicemail but did not hear back. This motion represents an emergency given the facts and circumstances.

DATED this 15th day of April, 2019.

FOX ROTHSCHILD LLP

s/ Lincoln Bandlow

Bryan J. Case, WSBA #41781

Lincoln D. Bandlow, *Admitted Pro Hac Vice*
(CSBA #170449)

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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☒ Via CM/ECF
☐ Via U.S. Mail
☐ Via Messenger Delivery
☐ Via Overnight Courier
☐ Via Facsimile

DATED this 15th day of April, 2019.



Monica Dawson
Legal Administrative Assistant